

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

DEREK FOLLEY,	:	
	:	
Petitioner,	:	
	:	Case No. 3:22-cv-65
v.	:	
	:	District Judge Thomas M. Rose
KEITH J. FOLEY, Warden,	:	
	:	Magistrate Judge Michael R. Merz
Respondent.	:	

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**AMENDED ENTRY AND ORDER OVERRULING OBJECTIONS (DOC. NO. 62, DOC. NO. 67, DOC. NO. 69, AND DOC. NO. 70); ACCEPTING AND ADOPTING REPORT AND RECOMMENDATION (DOC. NO. 52); DENYING, WITHOUT PREJUDICE, PETITIONER’S “MOTION FOR SUMMARY JUDGMENT IN PURSUANT TO SNOW VIOLATION – DOUBLE JEOPARDY VIOLATION” (DOC. NO. 49); AND DENYING, WITHOUT PREJUDICE, PETITIONER’S “MOTION FOR SUMMARY JUDGMENT IN PURSUANT TO SPEEDY TRIAL VIOLATION” (DOC. NO. 51)**

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This 28 U.S.C. § 2254 *habeas corpus* case is before the Court following the Court’s April 4, 2022 Order (Doc. No. 68) (the “April 4 Order”). This Order amends and supersedes the April 4 Order. After the undersigned had executed the April 4 Order, the Clerk of Court filed three additional sets of written objections, each submitted by Petitioner Derek Folley (“Folley”), to the March 23, 2022 Report and Recommendation (“Report”) (Doc. No. 52): (1) Objection to Magistrate Judge Michael R. Merz- Report and Recommendations- In Pursuant To: Petitioner’s Motions for Summary Judgment 49 51 Should Be Denied (Doc. No. 67); (2) Amendment to Objection to Magistrate Judge Michael R. Merz- Report and Recommendations- In Pursuant To: Petitioner’s Motions for Summary Judgment 49 51 Should Be Denied (Doc. No. 69); and (3) Third Amendment to Objection to Magistrate Judge Michael R. Merz- Report and Recommendations-

In Pursuant To: Petitioner's Motions for Summary Judgment 49 51 Should Be Denied (Doc. No. 70). The Court examined those three filings and discovered that Folley had improperly mailed them to the Clerk's office in Columbus or the Clerk's office in Cincinnati, not to the Clerk's office in Dayton where this case is pending. (See Doc. No. 67-1; Doc. No. 69-1; Doc. No. 70 at PageID 224.)

Now having also considered those three sets of objections (i.e., Doc. No. 67, Doc. No. 69, and Doc. No. 70), in addition to once again considering the "Second Amendment to Objection to Magistrate Judge Michael R. Merz- Report and Recommendations- In Pursuant to : Petitioner's Motions for Summary Judgment 49 51 Should be Denied" (Doc. No. 62) that the Court had considered in issuing the April 4 Order, the Court's conclusion remains the same as the conclusion set forth in the April 4 Order. In the Report, Magistrate Judge Michael R. Merz recommended that the Court deny, without prejudice to their renewal after the record is complete, the two motions for summary judgment filed by Folley, i.e., Doc. No. 49 and Doc. No. 51. (Doc. No. 52.) Judge Merz explained that, although the Court ordered the Respondent to answer the Petition, the answer and the State Court Record are not due to be filed until May 9, 2022. (*Id.*)

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a *de novo* review of the record in this case. Upon said review, the Court finds that all four sets of objections (Doc. No. 62, Doc. No. 67, Doc. No. 69, and Doc. No. 70) to the Report are not well taken, and they are **OVERRULED**. See *Manfredi v. United States*, No. Civ. 12-1905 (RMB), 2012 WL 2884006, at \*1 (D.N.J. July 13, 2012) (denying, without prejudice, petitioner's motion for summary judgment as premature where respondent had not yet filed an answer to the *habeas* petition and the court did not have the relevant record necessary to determine the merits of

petitioner's claim for *habeas* relief); *Zamgola v. Campbell*, No. C 05-0975 JF (PR), 2006 WL 2263906, at \* 1 (N.D. Cal. Aug. 8, 2006) (denying, without prejudice, petitioner's motion for summary judgment as premature where court had yet to review the merits of the petition for a writ of *habeas corpus*); *c.f. Serv., Hosp., Nursing Home & Pub. Emps. Union, Loc. No. 47, Affiliated with Serv. Emps. Int'l Union, AFL-CIO v. Com. Prop. Servs., Inc.*, 755 F.2d 499, 507 (6th Cir. 1985) (affirming denial of motion for partial summary judgment as premature).

The Court **ACCEPTS** and **ADOPTS** the Report (Doc. No. 52) in its entirety and rules as follows:

1. The Court **DENIES**, without prejudice to refile, the "Motion for Summary Judgment in Pursuant to Snow Violation – Double Jeopardy Violation" (Doc. No. 49); and,
2. The Court **DENIES**, without prejudice to refile, the "Motion for Summary Judgment In Pursuant to Speedy Trial Violation" (Doc. No. 51).

Finally, the Court **ORDERS** Folley to send to the Clerk's office in Dayton (not to the Clerk's office in Columbus or Cincinnati) any document(s) that he wants to be filed in this case in the future. Failure to comply may result in the Court striking any filing(s) sent to the Clerk's office at a seat of court other than Dayton. As stated above, this Order amends and supersedes the order entered on April 4, 2022 (Doc. No. 68).

**DONE** and **ORDERED** in Dayton, Ohio, this Tuesday, April 12, 2022.

s/Thomas M. Rose

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE